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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA – FRESNO DIVISION

CHRISTINA BARBOSA and PATRICIA AGUILERA BARRIOS, on behalf of themselves and all similarly situated individuals,

Plaintiffs,

v.

CARGILL MEAT SOLUTIONS CORP., and DOES 1-50,

Defendants.

Case No. 1:11-cv-00275 SKO

Hon. Sheila K. Oberto

CLASS ACTION

JOINT MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

[Filed Together with Declarations of Alexander R. Wheeler, Philip A. Downey, and Kristin L. Dahl; and [Proposed] Order]

Date: June 5, 2013
Time: 9:30 a.m.
Courtroom: 7

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I. INTRODUCTION

On January 16, 2013, this Court granted preliminary approval of the **$1,290,000.00** class action settlement ("Settlement"). Immediately thereafter, the Claims Administrator mailed out the court-approved Notice of Proposed Settlement of Class Action ("Notice") and Claim, Waiver, Release and Consent to Join Form ("Claim Form") (collectively referred to hereinafter as the "Notice Packets") to all 1,837 class members, of which 1,051 submitted a valid and timely Claim Form. Plaintiffs Christina Barbosa and Patricia Aguilera Barrios ("Plaintiffs"), on behalf of themselves and others similarly situated, and Defendant Cargill Meat Solutions Corporation, ("Defendant"), jointly move for an order pursuant to Rule 23(e) of the Federal Rules of Civil Procedure granting final approval of this Settlement on the grounds that the Settlement is fair, adequate, and reasonable because:

- **1,060** out of 1,837 class members, or **57.70%** of the class, submitted Claim Forms and will receive money from the Settlement;[1]
- The claims of the 1,051 class members who submitted valid Claim Forms amount to $632,727.25 of the $785,347.26 Net Settlement Amount, or **80.5%**. Thus, at least that amount will be paid out to the claiming class members;
- Pursuant to the Parties' Settlement Agreement, the remaining unclaimed funds totaling $152,620.01, after resolution of late claims or other disputed claims, will be donated *cy pres* to the United Way of Fresno County;

[1] Although seven claims were untimely, the parties have agreed to accept these claims for purposes of the settlement. Another two claim forms were lacking claimant signatures but if corrected will be accepted. All nine of these claims are included in the total of 1,060 claims referenced above. [Dahl Decl. ¶14.]

- **No objections were submitted** by any class members as to the entire Settlement, including the request for attorneys' fees, costs, and incentive awards to the Settlement Class Representatives;
- Only **one** request for exclusion was submitted;
- The **average payout** for each participating Settlement Class Member who submitted a timely claim is approximately **$602.02**; and
- Settlement Class Members who worked for Defendant during the entire class period will receive the **maximum payout** of approximately **$922.29** from the Settlement.

The Settlement is fair and reasonable and the product of arms-length, good-faith negotiations by experienced counsel presided over by a highly-qualified mediator specializing in wage-and-hour class actions. Notably, not a single class member objected to the Settlement and only one individual asked to be excluded. This strong support for the Settlement reflects the significant monetary and other immediate benefits that the Settlement provides. Accordingly, the Court should grant final approval of the Settlement.

I. FACTUAL AND PROCEDURAL BACKGROUND

On February 16, 2011, Plaintiffs filed a class action Complaint alleging violations under the California Labor Code and Business and Professions Code section 17200 *et seq.*, in the United States District Court for the Eastern District of California against Defendant, on behalf of themselves and a putative class of current and former hourly employees of Defendant's meat processing facility in Fresno, California ("Fresno Plant").

Plaintiffs seek to represent the Settlement Class comprised of:

> all current and former hourly production and support employees of Defendant's meat packing facility in Fresno, California between February

2, 2009 and January 16, 2013 who did not timely opt out of the Settlement.

Plaintiffs allege that Defendant failed to ensure that Class Members were paid appropriate overtime wages and were not provided with meal and rest periods as required by California law. The alleged uncompensated time includes time employees spent preparing to begin their work day after they arrived at Defendant's Fresno Plant, donning and doffing personal protective clothing and equipment, obtaining and sanitizing safety equipment and gear, obtaining tools, equipment and supplies necessary for the performance of their work, "working" steels and all other activities in connection with these job functions.

Class Counsel and counsel for Defendant have conducted extensive proceedings in this action, including pre- and post-filing factual investigation, and both formal and informal discovery. The parties have exchanged disclosures pursuant to Fed. R. Civ. P. 26(a); have exchanged relevant discovery in the form of documents, including company policies, compensation and meal break time-keeping related records, hundreds of putative class member declarations based on extensive interviews of Settlement Class Members conducted by Class Counsel and Defense Counsel, which have been thoroughly reviewed and/or discussed among all parties; and have conducted numerous depositions. Both Class Counsel and counsel for Defendant have made a thorough study of the legal principles applicable to the claims asserted against Defendant.

The parties participated in two full-day mediation sessions with Michael Loeb, Esq., an experienced JAMS mediator in San Francisco, California. As a result, the parties reached a class-wide settlement of this action, subject to the Court's final approval. As detailed here, in the papers previously submitted in support of Preliminary Approval, in the Declarations of Class Counsel (Alexander R. Wheeler and Philip A. Downey) in Support of the Parties' Joint Motion for Final Approval of Settlement ("Wheeler Dec." and "Downey Dec."), in the Declarations of Claims

Administrator Kristin L. Dahl in Support of Motion for Final Approval of Settlement, and in the Declarations of Alexander R. Wheeler and Philip A. Downey in support of Joint Motion for Preliminary Approval of Class Action Settlement (Dkt. #47-5 and 52), the Settlement is an exceptional result for the Settlement Class.

The Settlement satisfies the criteria employed by courts in this judicial district for evaluating the fairness, adequacy, and reasonableness of class-action settlements. Plaintiffs' counsel and Defendant's counsel are both of the opinion that the Settlement Agreement is fair, reasonable, adequate and is in the best interest of the Settlement Class in light of all known facts and circumstances, including the significant risks and delays of litigation that are presented by the defenses and potential appellate issues that Defendant has asserted. Accordingly, Plaintiffs and Defendant respectfully request that this Court finally approve the Settlement as fair, adequate and reasonable, and in the best interests of the Settlement Class.

II. SUMMARY OF SETTLEMENT TERMS AND PLAN OF DISTRIBUTION

Under the terms of the Settlement Agreement, Defendant has agreed to pay a total maximum settlement amount of $1,290,000.00 ("Gross Settlement Amount"). The Gross Settlement Amount includes the service award payments of $5,000 to each of the Representative Plaintiffs in this action, the costs of administration of the settlement by the Claims Administrator in the amount of $21,930, an award of attorneys' fees in an amount of up to $430,000 and $32,722.74 in Class Counsel's costs of suit, and $10,000 for payment of any agreed and allowed late claims or unanticipated expenses. The balance remaining after these costs and expenses are deducted shall constitute the Net Settlement Amount from which awards to claiming class members will be calculated. Based on the number of weeks each Settlement Class member actually worked for Defendant during the eligibility period, the Claims Administrator will calculate an award for each individual. Each Settlement Class member's number

of settlement shares will be divided by the total settlement shares and that ratio will be multiplied by the Net Settlement Amount to determine the amount of the monetary award that each Settlement Class member will receive. One third (33.3%) of each Settlement Award shall be treated as back wages subject to W-2 reporting and normal payroll taxes and withholding will be deducted by the Claims Administrator pursuant to state and federal law on these amounts. The remaining two thirds (66.7%) of each Settlement Award shall be treated by all parties as non-wage penalties and will be reported on an IRS Form 1099 and shall not be subject to FICA and FUTA withholding taxes. Any part of the Settlement Amount not exhausted by the payment of late claims and related expenses, the unexhausted amount will be donated to The United Way of Fresno County pursuant to the *cy pres* doctrine.

In exchange for the Settlement benefits, Settlement Class members who did not opt-out of the Settlement Class will release Defendant from all claims asserted in this *Barbosa* action. In addition, Class Members who submitted a Claim Form/ FLSA Opt-In Form will also release all claims under the Fair Labor Standards Act. Class Members who did not submit a Claim Form/ FLSA Opt-In Form will not release any claims under the FLSA but will release all claims asserted in the *Barbosa* action unless they opted to be excluded from the Settlement.

III. THE CLAIMS ADMINISTRATION PROCESS

The procedures outlined in the Settlement Agreement, which have been scrupulously followed to date, provide what the parties believe is the fairest and most practicable procedure for notifying Settlement Class members about the terms of the Settlement and their respective rights. Dahl Administration LLC ("Dahl"), an independent and highly experienced third-party claims administration company, was appointed by the Court as the Claims Administrator for this Settlement. [Declaration of Kristin L. Dahl With Respect to Dissemination of Notice in Compliance With 28 §

1715 ("CAFA Dec.") at ¶¶ 1-2.] On February 5, 2013, as required by 28 U.S.C. §§ 1715(a) and (b), Dahl mailed notice of the proposed settlement of this action via Certified Mail to the appropriate state officials, the Attorneys General for California, Louisiana, Minnesota, Pennsylvania, Texas, and Wisconsin, and to the appropriate federal official, the Attorney General of the United States (the "CAFA Notices"). [*Id.* at ¶ 4.] The mailings included the items set forth in the CAFA Notices. [*Id.*] Copies of the CAFA Notices (without the court filings on CD-Roms that were included with those mailings) are attached to as Exhibit 1 to the CAFA Dec.

On February 13, 2013, Dahl mailed the Notice Packets in both English and Spanish to the 1,837 class members via first class mail. [Declaration of Kristin L. Dahl With Respect to Settlement Administration Activities Completed As Of April 29, 2013 ("Dahl Decl.") at ¶ 7-8.] As of the April 15, 2013 claim-filing deadline, 158 Notice Packets were returned as undeliverable. [*Id.* at ¶ 10.] Of these, 9 were returned undeliverable with a forwarding address and were re-mailed by Dahl and 149 were sent to a professional address location service for address tracing. [*Id.*] After the trace results, 100 were re-mailed to the updated addresses and 49 could not be remailed because no new address was found. [*Id.*]

As of April 26, 2013, Dahl received 1,060 total Claim Forms, representing a 57.70% claims rate. [*Id.* at ¶ 14.] Of these, 1,051 were valid and timely, 2 were deficient, and 7 were late. [*Id.*] This results in 80.5% of the Net Settlement Amount claimed, totaling $632,727.25 to be paid to the 1,051 claiming class members. [Dahl Decl at ¶ 14.] Although seven claims were untimely, the parties have agreed to accept these claims for purposes of the settlement. If the two claim forms that were lacking claimant signatures are corrected by the claimant, they, too, will be accepted. The maximum claim payment for class members who worked the entire class period is $922.29 and the average claim payment is $602.02. [*Id.* at ¶ 15.] As of the filing date

of this motion, Dahl did not receive any objections to the Settlement and only received one request for exclusion. [*Id.* at ¶ 12.]

IV. FINAL APPROVAL OF THE SETTLEMENT SHOULD BE GRANTED

The Ninth Circuit has declared that a strong judicial policy favors the settlement of class actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). Rule 23(e) sets forth a "two-step process in which the Court first determines whether a proposed class action settlement deserves preliminary approval and then, after notice is given to class members, whether final approval is warranted." *Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 525 (C.D. Cal. 2004) (*citing Manual for Complex Litig.* 3d, § 30.41). Final approval is warranted where the settlement is "fundamentally fair adequate, and reasonable." *Id.* (quoting 5 *Moore Federal Practice*, sec. 23.85 (Matthew Bender 3d ed.)).

In determining whether a proposed settlement is "fair, reasonable, and adequate" pursuant to Rule 23(e), courts may consider factors including (1) the strength of the case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the settlement amount; (5) the extent of discovery completed and the stage of the proceedings; (6) whether the class has been fairly and adequately represented during the settlement negotiations; and (7) the reaction of the class to the proposed settlement. *See Churchill Village, LLC v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (citing *Chrysler Corp.*, 150 F.3d at 1026); *see also Hanlon*, 150 F.3d at 1027 (the court's task is to "balance a number of factors," including "the risk, expense, complexity, and likely duration of further litigation," "the extent of discovery completed and the stage of the proceedings," and "the amount offered in settlement"). The opinion of experienced counsel supporting the settlement is entitled to considerable weight in a court's evaluation of a proposed settlement. *In re Michael Milken & Assoc. Sec. Litig.*, 150 F.R.D. 57, 66 (S.D.N.Y.

1993); *Reed v. General Motors Corp.*, 703 F.2d 170, 175 (5th Cir. 1983) ("[T]he value of the assessment of able counsel negotiating at arm's length cannot be gainsaid. Lawyers know their strengths and they know where the bones are buried.").

The Settlement proposed by the parties falls well within the range of possible approval since it meets each of the requirements of substantive and procedural fairness and there are no grounds to doubt the reasonableness of the proposed Settlement.

1. The Risk, Expense, Complexity, and Likely Duration of Further Litigation.

Although Plaintiffs believe their claims have a great deal of merit, parties in the litigation process always face the significant risk of an adverse result, or a partially adverse result, and would be required to expend additional time and resources litigating the case. The Settlement with Defendant for the consideration and on the terms set forth in the Settlement Agreement is fair, reasonable and adequate and is in the best interests of the Settlement Class in light of all known facts and circumstances, including the risk of significant delay, the risk the Settlement Class would not be certified or would only be partially certified by the Court, and the risk of an adverse result on the merits including consideration of the defenses asserted by Defendant.

Continued litigation of Plaintiffs' and the Class' claims in this action would require substantial additional preparation, discovery, motion practice, and, potentially, a jury trial on the merits. Defendant presented substantive evidence that its policies and practices during the limitations period applicable to this case complied with state and federal law with regard to payment of wages for all time worked and providing compliant meal and rest periods in accordance with California law. Ultimate resolution of these hotly contested issues would involve the deposition and presentation of numerous additional witnesses; the consideration, preparation and presentation of voluminous documentary evidence; and the preparation and analysis of expert reports. In addition, Defendant would oppose class certification and likely move to decertify the

case following discovery and prior to trial. If this case were to go to trial, it is estimated that fees and costs would easily add up to millions of dollars.

By contrast, the Settlement Agreement will yield a prompt, certain, and very substantial recovery for the Class. Such a result will benefit the parties and the court system. For these reasons, Plaintiffs believe this is an excellent Settlement for the Class.

2. The Settlement Amount

The proposed Settlement falls within the range of possible approval. To evaluate this criterion, which focuses on "substantive fairness and adequacy," "courts primarily consider plaintiffs' expected recovery balanced against the value of the settlement offer." *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d at 1080.

Here, the Settlement should be approved because it confers a substantial benefit on the Settlement Class Members, whereas proceeding with litigation would impose significant risk of no recovery as well as ongoing, substantial expense. At least 1,051 claiming class members will share in a $1,290,000 Gross Settlement Fund (less the costs of administration, Class Counsel fees and costs, service awards and disputed claims fund), which will provide each Class Member with substantial monetary relief of up to $900 each if they worked during the entire statute of limitations time period. This is a particularly significant amount when one considers that the applicable statute of limitations at the time of the filing of the complaint in this action was just over two years (*see* First Amended Complaint, ¶ 2).

The Settlement Agreement provides that the Claims Administrator will use personnel and payroll records provided by Defendant to determine the amount that each Settlement Class member is eligible to receive upon submission of a valid and timely Claim Form. The Claims Administrator is required to calculate an award for each individual based on the number of weeks they actually worked for Defendant during

the applicable eligibility period. Thus, each Class Member's settlement award is proportionate to the number of weeks he or she worked for Defendant and thereby provides a larger share of the Settlement to those individuals who arguably had a longer period of employment at the Fresno Plant. The Settlement has no reversion. Thus, the entire net settlement fund paid by Defendant to settle this case will go either to Settlement Class Members or to a worthy *cy pres* recipient, the United Way of Fresno County, which has a substantial record of service to individuals in the immediate geographic vicinity of the Fresno Plant. Importantly, this Court has previously approved the United Way of Fresno County as a *cy pres* recipient following the Final Approval of a previous settlement alleging, inter alia, meal and rest break claims in *Salcido v. Cargill Meat Solutions Corp.* (Case No. 1:07-cv-01347-LJO-GSA) (date of final approval May 29, 2009).

3. The Extent of Discovery Completed

In the course of discovery and mediation, the Parties exchanged numerous relevant documents, obtained sworn declarations, and took several depositions. Wheeler Decl. at ¶¶ 1-14; Downey Decl. at ¶¶ 5-8. In particular, Plaintiffs' counsel reviewed documents and Defendant's time-keeping-related records applicable to the claims alleged in the Complaint. *Id.* Plaintiffs' counsel also analyzed Defendant's meal and rest break records for members of the Settlement Classes to estimate the amount of lost wages and other damages/penalties implicated by Plaintiffs' claims. *Id.* Plaintiffs' counsel additionally conducted a thorough investigation into the facts by diligently pursuing and conducting, with the help of translators where necessary, dozens of extensive and detailed in-person interviews of Class Members and analyzing the information they provided. *Id.* In addition, prior to mediation, Plaintiffs' counsel conducted detailed interviews of dozens of Settlement Class members concerning their wage and hour claims and both defended and deposed material witnesses.

Settlement in this matter was reached only after informed arms' length negotiations between the parties. Both parties conducted extensive investigation allowing them to assess the strengths and weaknesses of the case. Formal mediations in June, 2012 and September, 2012 before a skilled and experienced mediator was required, and the parties also engaged in additional in-depth negotiations in the weeks following two full-day mediation sessions concerning the detailed terms of the proposed settlement. Thus, the Settlement is the product of non-collusive negotiations.

4. The Class Was Adequately Represented by Counsel and the Class Representatives

Class Counsel has extensive experience in employment class action law, including extensive experience in wage-and-hour class action litigation. The R. Rex Parris Law Firm and The Downey Law Firm, LLC have been appointed class counsel in dozens of employment class action cases, and has recovered hundreds of millions of dollars for California employees. Wheeler Decl. at ¶¶ 15-16; Downey Decl. at ¶ 3. Both parties' counsel were capable of assessing the strengths and weaknesses of the class members' claims against Defendant and the benefits of the proposed Settlement under the circumstances of the case and in the context a private, consensual settlement agreement.

In this action, the Representative Plaintiffs took very real steps to advance the interests of the Settlement Class in this litigation. Barbosa Decl. at ¶¶ 4-10 and Barrios Decl. at ¶¶ 6-11. They brought the claim to the attention of Class Counsel. Barbosa Decl. at ¶ 4 and Barrios Decl. at ¶ 6. They searched their files and produced all of the documents they had relating to their employment by Defendant. Barbosa Decl. at ¶ 5 and Barrios Decl. at ¶ 8. They explained the employment practices that they encountered. Barbosa Decl. at ¶¶ 4-5 and Barrios Decl. at ¶ 6. They gave several extensive interviews concerning their experiences. Barbosa Decl. at ¶¶ 4-7 and Barrios

Decl. at ¶ 7. Moreover, they took the extraordinary step of putting themselves on the line by agreeing to serve as Class Representatives, with all of the attendant duties, and by agreeing to put the interests of the Class ahead of their own. Barbosa Decl. at ¶¶ 4-10 and Barrios Decl. at ¶¶ 6-11. As a result of their efforts, the Settlement Class members will benefit from substantial financial recoveries. The proposed service payments of $5,000 to each of the three Class Representatives is reasonable in light of the efforts they made and risks they took in bringing and prosecuting this action to obtain the Gross Settlement Amount.

5. The Reaction of the Class to the Proposed Settlement

The class members' responses to the Settlement overwhelmingly support final approval. The Settlement was well received by the Class – ***not a single class member has objected to the Settlement***. It is highly significant that the Claims Administrator has received 1,060 Claim Forms, no objections, and only 1 request for exclusion to the Settlement. This response from the Settlement Class demonstrates the fairness and adequacy of the Settlement's terms. Nothing in the response of Class members warrants denial of the final approval of the Settlement. Given the Court's preliminary approval and the complete absence of any objections by class members, final approval of the settlement is warranted.

6. Final Certification of the Settlement Class is Proper and Should Be Granted.

Class certification requires that: (1) the class be so numerous that joinder of all members individually is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the class representative must be typical of the claims or defenses of the class; and (4) the person representing the class must be able fairly and adequately to protect the interests of all members of the class. *See* Fed. R.

Civ. P. 23(b); *Staton v. Boeing Co.*, 327 F.3d 938, 953 (9th Cir. 2003). In addition to meeting Rule 23(a)'s conditions, the parties seeking class certification must also show that the action is maintainable under Rule 23(b). Here, the parties agree, for purposes of this settlement only, that the action is maintainable under Rule 23(b)(3) because questions of law or fact common to Class Members predominate over any question affecting only individual members, and a class action is superior to other available methods for fairly adjudicating the controversy. *See* Fed. R. Civ. P. 23(b)(3); *Hanlon v. Chrysler*, 150 F.3d 1001, 1022 (9th Cir. 1998). A district court has discretion in determining whether each Rule 23 requirement has been satisfied. *See, e.g.*, *Califano v. Yamasaki*, 442 U.S. 682, 701 (1979); *Montgomery v. Rumsfeld*, 572 F.2d 250, 255 (9th Cir. 1978).

As this Court recognized in provisionally certifying the Settlement Class in its Preliminary Approval Order, the proposed Settlement Class meet all the requirements of Rule 23(a) as well as those of Rule 23(b)(3), and, thus, final certification of the Settlement Class is now appropriate.

a. Rule 23(a) is Satisfied.

Rule 23(a) restricts class actions to cases where: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. FED. R. CIV. P. 23(a). These requirements are more commonly referred to as numerosity, commonality, typicality, and adequacy of representation. *Hanlon*, 150 F.3d at 1019.

Here, the parties agree, for purposes of settlement, that the numerosity requirement is easily met. The Class List Defendant submitted to the Settlement Administrator listed 1,837 members of the Settlement Class. Nearly 1,060 Claim Forms

have been returned to the Settlement Administrator. These numbers are more than sufficient to support certification.

The parties further agree for settlement purposes that commonality is also satisfied here, where all of the class members were employed at the same Fresno, California processing plant, by the same employer, and had similar job responsibilities (line and support workers processing meat). They were subjected to the same employment policies and practices and were subject to the same allegedly improper compensation and break practices. The class members have the same general type of donning and doffing claims for regular and overtime compensation and they assert the same claims for violations of California Labor Code provisions regarding meal and rest periods and wages, and other common state law claims.

Rule 23(a)(3) requires that the "claims or defenses of the representative parties are typical of the claims or defenses of the class." "Under the rule's permissive standards, representative claims are 'typical' if they are reasonably coextensive with those of absent class members; they need not be substantially identical." *Hanlon*, 150 F.3d at 1020; *see also Staton*, 327 F.3d at 957. Although the claims of the purported class representative need not be identical to the claims of other class members, the class representative "must be part of the class and possess the same interest and suffer the same injury as the class members." *General Tel. Co. of Southwest v. Falcon*, 457 U.S. 147, 156 (1982). "That injuries may differ in amount does not defeat typicality." *Hopson v. Hanesbrands, Inc.*, 2009 WL 928133 (N.D. Cal. April 3, 2009).

Here, Plaintiffs' claims are coextensive with those of the other class members. Both Plaintiffs and the class members seek relief for unpaid regular and overtime wages for Defendant's alleged failure to pay them for time spent preparing, donning and doffing, cleaning and sanitizing required work gear and equipment, among other things. Plaintiffs and the class members are also seeking relief for the same common, alleged underlying violations of California wage and hour laws for failing to provide meal and

rest breaks. Defendant's defenses to Plaintiffs' claims are typical of Defendant's defenses to all class members' claims. Thus, the parties agree for settlement purposes that the typicality requirement is met because the legal theories pursued by the named Plaintiffs are identical to those of the absent class members, and they suffered the same alleged type of injury (*i.e.*, denial of overtime pay), even though the amount of damages suffered by each class member is not exactly identical.

Rule 23(a)(4) permits certification of a class if the representative parties "fairly and adequately protect the interests of the class." Representation is adequate if: (1) the class representative and counsel do not have any conflicts of interest with other class members; and (2) the representative plaintiff and counsel will prosecute the action vigorously on behalf of the class. *Staton*, 327 F.3d at 957. Here, there is no allegation or appearance of any conflict between the two named representatives and their counsel or other class members. The two named representatives have been strong advocates for the Classes.

b. Rule 23(b) is Satisfied.

The Settlement Class also satisfies Rule 23(b) (3). Certification under Rule 23(b) (3) is appropriate "where the actual interests of the parties can be served best by settling their differences in a single action." *Hanlon*, 150 F.3d at 1022 (*quoting* 7A Wright & Miller, *Federal Practice & Procedure*, § 1778). That section provides that a class action may be maintained if "questions of law or fact common to class members predominate over any questions affecting only individual members" and where "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." FED. R. CIV. P. 23(b) (3).

Predominance is established where the "proposed classes are sufficiently cohesive to warrant adjudication by representation." *Hanlon*, 150 F.3d at 1022. Specifically, "when common questions present a significant aspect of the case and they

can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather than on an individual basis." *Id.* Here, because all class members challenge the same alleged practices and seek recovery under the same laws, an argument reasonably exists that common questions of liability predominate and for purposes of this settlement the parties do agree that this standard has been met.

Courts determine whether a class action is a superior vehicle by comparing alternative mechanisms of dispute resolution. *See Hanlon*, 150 F.3d at 1023. Here, as in *Hanlon*, the alternative mechanism to a class action would be individual claims for small amounts of damages. This alternative would burden the court system and makes little economic sense for litigants or their counsel. *Id.* (noting possibility that in individual cases, "litigation costs would dwarf potential recovery"). A class action is clearly a superior method in a case such as this.

Accordingly, the parties agree that the Class should be certified for settlement purposes only pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3).

V. CONCLUSION

For the foregoing reasons, the parties respectfully request that this Court grant this joint and agreed Motion in its entirety and grant final approval of the Settlement.

Respectfully submitted,

THE DOWNEY LAW FIRM, LLC
R. REX PARRIS LAW FIRM

DATED: May 6, 2013

/s/ Alexander R. Wheeler
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CHRISTINA BARBOSA and PATRICIA AGUILERA BARRIOS

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DATED: May 6, 2013

/s/ Jeremy J. Glenn

Jeremy J. Glenn

Attorneys for Defendant

CARGILL MEAT SOLUTIONS CORP.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing documents filed via the Electronic Case Filing ("ECF") system in the United States District Court of the Eastern District of California were served on all parties registered for e-filling in this matter on May 6, 2013.

/s/ Alexander R. Wheeler